

JIMMIE L. GOODWIN
Claimant

JIM GOODWIN ROOFING
Respondent

RELIANCE INSURANCE COMPANY
Insurance Carrier

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

This is a claim for an accident occurring on or about July 1, 1994. After finding that claimant was an employee of the respondent and that he sustained personal injury by accident arising out of and in the course of employment, the Judge awarded claimant permanent partial disability benefits based upon the stipulated 20 percent functional impairment rating to the right upper extremity and shoulder.

Respondent and its insurance carrier contend the Judge erred by finding that claimant was an employee of the respondent when the alleged accident occurred. If claimant is found to be an employee, respondent and its insurance carrier contend that claimant injured his shoulder moving railroad ties while working at home rather than being injured while working for the respondent.

The issues before the Board on this appeal are:

- (1) Was claimant an employee of the respondent when the alleged accident occurred?
- (2) Did claimant sustain an accidental injury arising out of and in the course of employment with the respondent?
- (3) What is claimant's average weekly wage?
- (4) For any medical expense ordered paid, should payment be made to the claimant or made directly to the health care provider?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

- (1) The Appeals Board affirms the Judge's finding that on or about July 1, 1994, Jimmie L. Goodwin sustained personal injury by accident arising out of and in the course of his employment with his father's company, Jim Goodwin Roofing.
- (2) The Board finds that it is more probably true than not that Jimmie L. Goodwin injured his shoulder while dumping discarded fencing as alleged. The Board also finds that it is more probably true than not that Jimmie L. Goodwin was an employee of Jim Goodwin Roofing at the time of the accident and that he was working for the company and performing duties specifically assigned by his father when the accident occurred.
- (3) The parties stipulated that Jimmie L. Goodwin has sustained a 20 percent functional impairment to the right upper extremity and shoulder.
- (4) The Appeals Board affirms the Judge's finding that the average weekly wage is \$600. That finding is supported by Jimmie L. Goodwin's testimony that he earned \$15 per hour while working for his father and that he most generally worked 5 days/40 hours per week. Additionally, Pam Stewart, who is Jimmie L. Goodwin's sister and Jim Goodwin's daughter, prepared an insurance form dated January 24, 1995, in her capacity as secretary of Goodwin Roofing that indicated Jimmie was a company supervisor who earned \$2,800 per month.

(5) The Board adopts the Judge's findings and conclusions to the extent they are not inconsistent with the above.

CONCLUSIONS OF LAW

(1) The Award should be affirmed.

(2) The scheduled injury statute¹ provides that a worker is entitled to a maximum of 225 weeks of permanent partial disability benefits for the loss of an arm and shoulder. As provided by regulation,² the 225 weeks is multiplied by the 20 percent functional impairment rating to yield 45 weeks of permanent partial disability compensation which Mr. Goodwin is entitled to receive as a result of the shoulder injury.

(3) Jim Goodwin Roofing and its insurance carrier are responsible for all the medical expense, including that discharged in bankruptcy, that Jimmie L. Goodwin has incurred as a result of this shoulder injury. Out-of-pocket expenses should be paid directly to Jimmie L. Goodwin. Unpaid bills should be paid directly to the health care provider.

AWARD

Wherefore, the Appeals Board affirms the Award dated July 13, 1998, entered by Administrative Law Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: W. Fredrick Zimmerman, Kansas City, KS
Stephen P. Doherty, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 44-510d.

² K.A.R. 51-7-8.